

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Salk	Team: Team # 5	CCRB Case #: 200904879	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 03/30/2009 2:00 PM	Location of Incident: Howard Avenue and Eastern Parkway	Precinct: 73	18 Mo. SOL 9/30/2010	EO SOL 9/30/2010	
Date/Time CV Reported Tue, 03/31/2009 8:57 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 03/31/2009 8:57 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joel Rosenthal	23138	946197	073 PCT
2. POM Scott Leff	03743	940375	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. CPT Alex Perez	00000	887517	073 PCT
2. SGT Danielle Roventini	02499	933298	073 PCT
3. POM Lou Attina	13135	927876	073 PCT
4. POM Graham Emburey	25748	932603	073 PCT
5. POM Orlando Lamourt	05429	906604	073 PCT
6. POM George Luti	26504	933952	073 PCT
7. POF Juanita Bennett	00201	932321	073 PCT
8. SGT Michael Dwyer	01089	920242	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joel Rosenthal	Force: PO Joel Rosenthal pointed his gun at § 87(2)(b)	
B.POM Scott Leff	Discourtesy: PO Scott Leff spoke obscenely and/or rudely to § 87(2)(b)	

## Case Summary

On March 31, 2009, § 87(2)(b) filed this complaint by phone with the CCRB. At 4:00 p.m. on March 30, 2009, § 87(2)(b) was pulled over at Howard Avenue and Eastern Parkway in Brooklyn, for traffic violations, by PO Joel Rosenthal in a marked scooter. The following allegations arose:

- **Allegation A – Force: PO Joel Rosenthal pointed his gun at** § 87(2)(b) § 87(2)(g) § 87(2)(g)
- **Allegation B – Discourtesy: PO Scott Leff spoke obscenely and/or rudely about** § 87(2)(b) § 87(2)(g)

## Results of Investigation

### Civilian Statements

#### Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) black male standing 6'2" and weighing 235 pounds, with black hair and brown eyes. § 87(2)(b)

#### CCRB Testimony (encl. 4)

§ 87(2)(b) was interviewed at the CCRB on April 6, 2009.

On March 30, 2009, at about 4:30 p.m., § 87(2)(b) was driving his 2006 blue Dodge Charger on Blake Avenue near Rockaway Avenue in Brooklyn. The car has four factory-tinted windows. He had just picked up his two children, aged § 87(2)(b) and § 87(2)(b) who were in the backseat. No one else was in the car.

§ 87(2)(b) noticed an officer, identified as PO Joel Rosenthal, traveling behind him in a marked single-person scooter. He noticed nothing indicating PO Rosenthal was trying to pull him over, so he continued driving. He took a right on Howard Avenue, and the scooter followed him for about six blocks. § 87(2)(b) did not turn around at any time, and did not notice any lights or siren on the scooter. He noted that the sun was low in the sky and the scooter was close to the ground, so he may have been unable to see the lights activated.

§ 87(2)(b) stopped at the corner of Howard Avenue and Eastern Parkway. PO Rosenthal walked up on the driver's side and banged on § 87(2)(b)'s window. § 87(2)(b) rolled it down and said, "What's up?" His demeanor was normal and he did not speak loudly. PO Rosenthal said, "Put the car in park for me." He spoke aggressively, as if he had been "chasing someone who did something wrong." § 87(2)(b) put the car in park. PO Rosenthal told him to get out of the car. § 87(2)(b) responded, "What happened?" § 87(2)(b) stated that both his hands were on the steering wheel, but also noted that around this time he unbuckled his seatbelt.

PO Rosenthal again told him to get out of the car. At the same time, he drew his gun and immediately pointed it in § 87(2)(b)'s face. He placed the gun through § 87(2)(b)'s open window. § 87(2)(b) backed away from the window and PO Rosenthal pushed it closer to his face until it was about three inches away. § 87(2)(b) put his hands in the air and got out of the car.

PO Rosenthal continued pointing the gun at § 87(2)(b) and told him to put his hands on the car, which he did. PO Rosenthal holstered his gun and called a 10-85, a request for assistance,

over the radio. § 87(2)(b) indicated he had not cursed at or argued with PO Rosenthal and was unaware of any actions he had taken that might cause PO Rosenthal to fear for his safety.

§ 87(2)(b) told PO Rosenthal he had something in his pocket he wanted to show him, then reached toward his back pocket and removed his § 87(2)(b). He acknowledged to the CCRB that he possibly should have identified himself as § 87(2)(b) earlier in the encounter but did not because he was scared and because PO Rosenthal's gun was pointed at him.

After PO Rosenthal saw § 87(2)(b)'s ID, he attempted to call off the request for backup, but several units arrived regardless. § 87(2)(b) was upset and by now was cursing at PO Rosenthal. Another officer, described as a 5'7" uniformed white male who was bald and identified via documentation and § 87(2)(b)'s later photo viewing as PO Scott Leff, was speaking to a female sergeant, identified by investigation as Sgt. Danielle Roventini. PO Leff said about § 87(2)(b) "Fuck him, he's an asshole."

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§ 87(2)(b)

#### **Photo Array (encl. 5)**

§ 87(2)(b) viewed a series of photo arrays at the CCRB on January 20, 2010. He positively identified PO Scott Leff as the officer who referred to him as an "asshole."

#### **NYPD Statements:**

##### **Subject Officer: PO JOEL ROSENTHAL**

- PO Rosenthal is a § 87(2)(b)-old white male standing 5'11" and weighing 220 pounds, with brown hair and brown eyes.
- On the incident date, he worked from 11:30 a.m. to 8:05 p.m. assigned to a marked scooter numbered 3599. He was dressed in uniform and working alone.

#### **Memo Book (encl. 6)**

PO Rosenthal's memo book indicates he had a car stop at 4:00 p.m. at Howard Avenue and East New York Avenue.

#### **Map (encl. 8)**

PO Rosenthal brought a Google Maps printout of the vicinity of the incident to his CCRB interview. During his interview, he marked with an X the location where he first observed § 87(2)(b) (at Blake Avenue between Chester and Bristol Streets). Marked with a "B" is where § 87(2)(b) failed to yield while turning right onto Howard Avenue. Marked with a "C" is the rough vicinity of where PO Rosenthal finally approached § 87(2)(b) on foot. The map indicates that PO Rosenthal attempted to pull over § 87(2)(b) for approximately 0.8 miles.

#### **CCRB Testimony (encl. 7)**

On May 6, 2009, PO Rosenthal was interviewed at the CCRB.

PO Rosenthal was traveling in his scooter immediately behind § 87(2)(b) traveling westbound on Blake Avenue (a two-way street) between Bristol and Chester Streets, when he noticed § 87(2)(b) move to the center of the road, straddling the double-yellow line. He drove in the center like this for about two blocks, then returned to the right. PO Rosenthal could not see the vehicle's occupants because it had dark window tints.

At Thomas Boylan Street, PO Rosenthal decided to pull § 87(2)(b) over for this traffic violation. He activated a turret light on the top of his vehicle and moved toward the center of the

street so § 87(2)(b) could see him in his side-view mirror. PO Rosenthal honked his horn repeatedly, because the scooter is not equipped with a siren. § 87(2)(b) did not acknowledge PO Rosenthal in any way and continued driving. He took a right at Howard Avenue, failing to yield at a yield sign, and cutting off another vehicle which had the right-of-way. He continued on Howard Avenue in the right-hand lane, and then at Pitkin Avenue he abruptly cut to the left-hand lane without signaling. There was significant traffic on Howard Avenue. PO Rosenthal believed these were evasive maneuvers and that § 87(2)(b) was trying to escape from him.

§ 87(2)(b) stopped at a red light at Eastern Parkway. PO Rosenthal walked up to § 87(2)(b)'s driver side window and tapped on the glass. He stood to the rear of the door as a safety tactic. He could not hear any sound from inside the car, which was still running, and could not remember if he could see through the front windows. § 87(2)(b) rolled down the window. As he was rolling it down, PO Rosenthal began asking for his license, registration and insurance. Before he could finish, § 87(2)(b) began yelling, "Why the fuck did you stop me? What the fuck are you doing? Why the fuck am I here?"

§ 87(2)(b)'s hands were visible in front of him, but as he continued yelling, he reached toward the center console and his hands moved out of PO Rosenthal's sight. PO Rosenthal said two or three times, "Let me see your hands." He had his hand on his gun, which remained in his holster. § 87(2)(b) did not comply and continued cursing. PO Rosenthal said three times in rapid succession, "Step out of the car." § 87(2)(b) did not get out of the car or move his hands to where they were visible. This whole period lasted about 15 seconds.

PO Rosenthal stepped backward toward the car's trunk, drew his gun, and pointed it at § 87(2)(b). He told him again to get out of the car. § 87(2)(b) opened the door and stepped out. He became increasingly belligerent. PO Rosenthal called for a sergeant and another unit on his radio. § 87(2)(b) screamed, "Yeah, you get your fucking sergeant, get your fucking sergeant, get more fucking people, 'cause we're on the same team." He reached into his back pocket, removed his § 87(2)(b) and threw it at PO Rosenthal's feet. This was the first action § 87(2)(b) took to identify himself.

A large number of other police officers responded around this time and PO Rosenthal had no further contact with § 87(2)(b). He stood around 15-20 feet away while the responding officers tried to calm down § 87(2)(b). § 87(2)(b) screamed and cursed at everyone, and yelled that PO Rosenthal had pointed a gun at him while his children were in the car. This was the first time PO Rosenthal realized his children were with him. Several officers, not realizing § 87(2)(b) asked why he wasn't being arrested. Sgt. Danielle Roventini arrived and tried to calm him down, and § 87(2)(b) screamed at her. PO Rosenthal did not hear anyone use profanity with § 87(2)(b) or in reference to him. § 87(2)(b)

#### **Subject Officer: PO SCOTT LEFF**

- *PO Leff is a § 87(2)(b)-old white male standing 5'8" and weighing 160 pounds, with brown hair and brown eyes.*
- *On the incident date, he worked from 3:00 p.m. to 11:35 p.m. assigned to patrol sector A in the 73<sup>rd</sup> Precinct. He was working with PO Juanita Bennett, dressed in uniform, and assigned to a marked patrol car.*

#### **Memo Book (encl. 9)**

PO Leff had no memo book entries regarding this incident. His memo book detailed many other incidents he responded to around this time. At 3:44 p.m. he responded to a possible crime at 789 McDonough Street. He arrived at the scene at 4:00 p.m. At 4:01 p.m., he marked that job as unfounded. Also at 4:01 p.m., he responded to see a complainant at § 87(2)(b)

At 4:30 p.m., he marked that job as a non-crime corrected. At 4:49 p.m., he responded to a report of a dispute at Atlantic Avenue and Saratoga Avenue. At 4:52 p.m., he arrived at that location. He marked the job “gone on arrival” at 4:54 p.m.

#### **CCRB Testimony (encl. 10)**

On February 3, 2010, PO Leff was interviewed at the CCRB.

PO Leff was informed of what occurred, but did not recall responding to this incident, and in fact did not remember being involved in an incident involving § 87(2)(b) at any point in his career. He did not recognize § 87(2)(b) in a photograph.

#### **NYPD Documents**

##### **SPRINT (encl. 12)**

At 3:54 p.m., 73<sup>rd</sup> Precinct scooter number 3599 (PO Rosenthal) put over the radio a request for backup. Patrol sector A and the patrol sergeant responded at 3:55 p.m., and the sergeant requested no further units. At 4:01 p.m, sector A returned to patrol. § 87(2)(b)

##### **Roll Call (encl. 14)**

The roll call corroborates that PO Leff and PO Bennett were assigned to patrol sector A and that PO Rosenthal was working alone in a scooter.

#### **Civilian’s Criminal History (encl. 16)**

- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### **Civilian’s CCRB History (encl. 2C)**

- This is the first complaint filed by § 87(2)(b)

#### **Subject Officers’ CCRB History (encl. 2A-B)**

- PO Rosenthal has been a member of the service for two years and there are no substantiated CCRB allegations against him.
- PO Leff has been a member of the service for four years and there are no substantiated CCRB allegations against him.

### **Conclusion**

#### **Identification of Subject Officers**

PO Rosenthal’s role in the incident is undisputed.

§ 87(2)(b) identified PO Leff in a photo array. Also, he was assigned to patrol sector A, which responded according to the SPRINT. He has been positively identified on this basis, although he did not recall the incident.

#### **Investigative Findings and Recommendations**

##### **Allegation A – Force: PO Joel Rosenthal pointed his gun at § 87(2)(b)**

Officers are given broad discretion to draw and point their guns when they reasonably perceive a significant threat to their safety. *NYPD v. Gliner*, OATH Index No. 955/00 (Sept. 6, 2000) (encl. 1). § 87(2)(g)

§ 87(2)(b)

claimed that at the outset of the incident, he was

calm and spoke normally to PO Rosenthal, and in his CCRB testimony he portrayed himself as basically compliant. § 87(2)(g)

§ 87(2)(b) when he filed his complaint, § 87(2)(b) said that PO Rosenthal asked him twice to step out of the car but he refused because he did not want to leave his children unattended, and instead demanded to know why he had been pulled over. § 87(2)(g)

§ 87(2)(b) He disputed two of the three reasons he was given command discipline (but acknowledged being upset and cursing, the grounds upon which he was cited for discourtesy), and held that he was pulled over for no valid reason other than racial profiling. § 87(2)(g)

**Allegation B – Discourtesy: PO Scott Leff spoke obscenely and/or rudely to § 87(2)(b)**

PO Leff did not recall the incident. § 87(2)(g)

Team: \_\_\_\_\_

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Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date